

Region V

Midwestern States

Regulatory Enforcement Fairness

Hearing

Cleveland, Ohio

May 22, 2003

P R O C E E D I N G S

MR. BARRERA: We are now recording. Now I'm going to call Edward Corrierison? Okay. How about Val von Zeapoult? (Inaudible). Oh, how are you? (Inaudible).

(Laughter)

MR. SCOTT: Where do I go?

MR. BARRERA: You can stand right there sir if you like. (Inaudible) I don't think we need a microphone. Just speak up a little bit. We can hear you.

MALE SPEAKER: There is a mike in case you'd like to use it.

MR. SCOTT: Don't lock the door in case you want to run me out of here.

(Laughter).

But I've got a couple of questions I would like to bring up.

MR. BARRERA: Oh, if you wouldn't mind sir, state your name and the name of your company before we get started.

MR. SCOTT: Don Scott, right here from Cleveland, Ohio. (Inaudible) all the questions I have are related to my experiences with the IRS.

MR. BARRERA: Okay.

MR. SCOTT: I'm also on the Small Business Committee with the 11th Congressional District Caucus (inaudible).

With the IRS, I want to know what takes the IRS so long to release a federal lien once it's been paid in full. I sold my building, paid everybody off in cash in 1997.

I still don't have all the liens released and it's 2003, so you can understand how difficult that makes it for me to try and develop another business.

One question; second question is, how do I get to talk to an IRS person about what I feel may be errors in the way they computed the costs -- whereas I paid over \$300,000 in taxes,

that when I go back after I quit crying and threatening to jump off a bridge, I computed it myself with my accountant, I show maybe a \$20,000 or \$30,000 deficit in their favor.

And I can't get any resolution on that. Everybody is busy, they can't find the records and all that sort of thing. And I wish there was something you could do about correcting that.

MR. BARRERA: Okay.

MR. SCOTT: Well I have another --

MR. BARRERA: Sure, go ahead.

MR. SCOTT: Are you going to answer it or just --

MR. BARRERA: Why don't you go on. And we've got some IRS people here and we're going to answer those but I'm going to open it for questions (inaudible).

MR. SCOTT: My next question relates to the Small Business Administration. Shall I talk about that now?

MR. BARRERA: Sure, go ahead.

MR. SCOTT: As a (inaudible) of the Black American Business Community here, I notice when the list comes out in Green Magazine or Inside Business, that they have a list of people that they've loaned money to.

And I find that particularly in the large amounts, \$100,000, \$200,000, \$300,000, rarely is a black man eligible for that. And I wondered what's up with that.

One of the things that happens is that when I go to -- and not just SBA. I don't want to beat up on them, (inaudible) with the banking community or any other lending community because here we're talking about government.

My personal history and my business history have to go together. They make a decision. Well maybe my business is paying its bills, or has paid its bills. As a small businessman I've been struggling for years.

So I wonder why when we go to the lending agencies, that the business isn't used to collateralize the loan and they take into account my personal history, which doesn't work.

I borrowed \$1,400,000 to build a Party City. Nothing in my personal history would have justified that kind of loan but the

business did. They collateralized the land and the building.

(Inaudible) a black person can't get the collateralization from the property that he's borrowed the money on. They turn him down strictly on his personal history. There's a problem with that. In our community that's a (inaudible). It's a reason to turn him down. I'm wondering if something can't be done about that.

Now we're talking about the SBA here but it's also a banking problem, which unfortunately the SBA has to send them to a bank, which turned us down in the first place. And the banks in Cleveland are very conservative even when they're dealing with you. They're ultra conservative when they're dealing with black business people. That's pretty much it.

MR. BARRERA: Okay, we'll go ahead and answer the SBA questions first and then we'll go to the IRS.

As far as the loan (inaudible) answer a couple of questions, but as far as the SBA is concerned, as far as their loans, actually our loans for African Americans are up 45 percent this year.

So it's not an African American thing, but (inaudible) working with people on that, but our loans are up 45 percent. Let me finish. And they're also up here in the Cleveland area and (Inaudible) will talk about that.

As far as you talked about the banks being conservative, that may very well be here in Cleveland but I do know that we had questions about some of our loaning practices today.

With the SBA, it's not our money that we're loaning out. We just guarantee it. That's the way Congress wanted it. They wanted us to guarantee the money not actually loan out the money.

And the money we're guaranteeing is taxpayer money and so we have to go through certain things to guarantee this money. But at the same time, the loaning requirements are not as strict as they are if you go through a regular bank.

So not that you couldn't get turned down by the bank in the first place, but then if you go to the SBA bank you may get that loan.

As far as taking your personal history at your bank, I think they take it all in but I'm going to let (Inaudible) -- because he knows this area better than I do. (Inaudible).

MALE SPEAKER: Thank you. With regard to minority lending in general as a micro management agency, our volume's up 45 percent, but that's nationwide.

What I'm concerned about is what do we do in Northern Ohio. These are the people that work for the people here in Northern Ohio. And if you look at what we've done in over the last eight or ten years, we've averaged between 13 and 16 percent of our total loans going to minorities. And that I think is a fairly good representation of the minority community in the small business community, 13 to 16 percent.

I personally would -- I'm trying to get to that 20 percent level, but as Michael said and you know, we have to look for the banks. And someone, and I'm probably going to get in trouble for saying this from the banking community, but I'll say it.

Someone sold the banks a bill of goods a few years ago and it's called credit scoring. And the banks use credit scoring. And a lot of the banks use that as almost sole determining, and it's called Key Scoring Goal Approach. If you don't make that score you go away.

Other banks have an interpretive approach. They take the credit score and then they look at your business issues and make a judgmental call.

And based on those business issues, they then see some mitigating circumstances there in the projections which are done (inaudible) how long you've been in business, your track record and they say, would the SBA guarantee we can do that.

So some banks use the Scoring Goal and the others use credit scoring with a judgmental approach. The SBA can't tell a bank, which approach to use, or how to use it.

The trouble with just credit scoring is that relies very heavily on your personal Credit Bureau Report. And a lot of times there are errors in personal Credit Bureau Reports just in how the reporting agencies get that information.

So if you are aware of it you need to correct it or explain that to the bank, that there are errors in your personal report.

Also the Credit Bureau Report has stuff that just reflects where you've been if it's correct, not where you're going.

Your business plan tells a bank or it tells the SBA where you're going. And if you have good projections and they're valid, they're not pie in the sky and the bank can verify them,

perhaps as a letter of interest or intent from your potential customers, that, with your track record, then the SBA can guarantee the loan based on your projections.

The thing here is that we need, and when I say we, we need to work with the borrowers as partners here, and work with the bank to get them to see that your business projections are what we should be looking at first, your credit score second.

But a lot of times the banks will get the credit score first and never get to the business plan. And myself and my staff are constantly working with the banks to try and to get them beyond that credit score, and to look at the real business.

MR. BARRERA: I invite you to meet with the (Inaudible). And I'm really not trying to cut you off. I want to make sure we give everybody a chance to give their testimony. But I'm also going to open it up regarding the IRS question, if any of the members have questions.

MALE SPEAKER: Mr. Scott, have you been able to make conversation with the IRS about the lien back to 1997?

MR. SCOTT: I have talked with the agent who handled the case at that time.

MALE SPEAKER: Have you written a letter certifying it, those kinds of things?

MR. SCOTT: No, I haven't done that. I don't know, I like personal conduct. (Inaudible).

MALE SPEAKER: I understand. Most those people are very busy and if you certify a letter, just a suggestion, then you may get their attention.

MR. BARRERA: And that's true. The IRS is run by paper. And if you have any type of documentation that you talked to them, that they know you --

But what I'm going to do here now is I'm going to have another person testify. But we got an IRS Rep here and he IS actually from DC. (Inaudible) I'm going to invite you to step outside and tell him what your situation is and then he is going to come back and tell us how your conversation went. Is that okay?

MR. SCOTT: Sure

MR. BARRERA: I appreciate you coming.

MALE SPEAKER: (Inaudible) but we all face this computerization (inaudible). But hopefully we can do some of that, change some of that in the future with small business. Thank you for coming.

MR. BARRERA: You can tell us how your conversation went too, okay?

We have Mark Kaiser. Okay come up and introduce yourselves.

MR. KAISER: My name is Mark Kaiser. This is John Krusinski. He has been a client of mine since 1986.

By way of history, John was born in Poland in the late 1930s. While in first grade in Poland, the Nazis invaded the country, destroyed his school so he could no longer go to school. John can't read and can't write.

He spent approximately five years in a Nazi concentration camp during World War II. After the war he recuperated for three years in a German hospital, and in the early 1950s, he immigrated to the United States.

In 1951 or there about, John started a business. He started as a butcher (inaudible) in Cleveland, Ohio. From 1951 to 1997, John operated several businesses, one of which is Oprobia Operation, which is well known and which is regulated by the FDA, and which is operated out of his East Side plant, which is also his home.

In the mid '80s John purchased a building on the West Side of Cleveland. He then started the wholesale production and sale of ethnic foods.

He was not regulated there by the FDA as he was on the East Side, but he was regulated by the USDA of the United States Department of Agriculture.

John first came into my office in 1986 detailing a history of disgraceful discrimination. To give you one example, during one instance he told one of the inspectors, after the war I was a DP, which was a displaced person.

I don't know if any of you are familiar with World War II history, but after the war there were people that actually had no homes. They were called displaced people. He said I was DP. The inspector said yeah, what's that mean dirty Pollock?

On another occasion they dropped ink on a desk and shut him

down until he had someone come and clean it up. On another occasion they urinated on the floor and insisted that his company clean it up.

All of this has been detailed in a lawsuit that took place from 1986 pretty much through 1996. Was dismissed several times, went to the Court of Appeals, got it reinstated and finally it was settled.

About two years after it was settled, the problems started again and since 1997, John Krusinski has been shut down.

He is still operating his plant on the East Side, which manufactures probably one of the finest pirogues in America. President Clinton had them special ordered into the White House in the 1990s. They're still being special ordered into the White House this day, to the dinning room.

The finest pirogues in America probably -- they're hand-made by Eastern European women who come in and work for John's company, John and Helen's company as a small business.

These people have been in business from 1951 until the present day with the pirogues, and until 1997 with the wholesale business of meat.

Since 1997, he's been retailing his meats out of there because that's under city inspection and he doesn't have to put up with federal regulatory garbage that he had to put up with for so many years. He's able to (inaudible) on a retail basis out of his West Side Plant.

He has never once had an insurance claim for adulterated food. Not one time. And yet he has faced -- and nobody ever got sick eating a Krusinski food product, ever. And yet he was shut down for unwholesome and unsanitary activities.

And let me tell you what the real problem is folks. You mention common sense -- the gentleman mentioned common sense. Well I would strongly encourage everybody -- I think the Bush Administration might actually be somewhat receptive to this.

Read the *Death of Common Sense*. It's a book. I forget who wrote it but its called *Death of Common Sense*. I've read it and it was incredible. And it detailed exactly what Mr. Krusinski's problem is.

At one point in time I put the regulations for John Krusinski's business on the table. As God is my witness, single-spaced both sides of the page, it was from here to here.

There is on way in the world --

MR. BARRERA: For the record, he is indicating from his belt basically to his middle of his eye.

MR. KAISER: That's fair. If you read the *Death of Common Sense*, originally a bunch of -- and I dislike liberals and conservatives equally so bear with me.

(Laughter)

But a bunch of liberals thought this is a nice way to be fair. We will put in a regulation, every conceivable possible thing that could happen. And then we will judge everybody equally.

But what has happened -- the result of this is that since nobody in the world who's -- small business in particular, can hire anybody who could possibly know these regulations, which by the way change on a daily basis as well -- since they can't know and since the small business has no way of really hiring enough people to really know what is going on, that leaves the inspectors with a total sense of power when it comes to food regulation.

They can always find something that's being violated. And so when they want to come down on somebody, they find something to come down on them for.

Now Tyson Foods, they benefit greatly from a huge mass of regulatory schemes because they are big enough that they can hire a team of people to know these regulatory schemes and can actually fight back.

But a guy like John Krusinski has no chance and over the last six years I would suggest to you that if you look -- and we've had literature come in John's office, his house on the East Side, that indicates an alarming rate of small processors that have been shut down in this country during the 1990s, in the Clinton years, and I would imagine its continued during the Bush years.

But it's an alarming rate. I've read this. And the reason for that is (a), there aren't enough inspectors now because of budgetary cutbacks, and (b) you have no way that a small business can possibly survive in this environment.

It's impossible, given these mind boggling, strangling regulations, and consequently you have small businesses being shut down.

We've been trying to reopen. In 1997, John Krusinski entered into a consent decree. He finally gave up. He finally entered into a consent decree wanting his family, his sons to reopen the business. Since that time there've been problems in his family and he has not been able to have it reopened.

So we've been trying the last few years to try to get him to be able to reopen it. And I was pretty much told by the attorney for the government, well now we have SSOP. And she pretty much told me, she goes, I really don't think it's possible for a business of John Krusinski's size to survive under SSOP.

MR. BARRERA: What is SSOP?

MR. KAISER: Well that's a good question.

MR. BARRERA: You know, the reason I ask is because we are trying to kind of wrap this up.

MR. KAISER: Well it's a good question. It's new regulatory scheme which resulted in me having to complete this single-spaced enforcement procedures that John Krusinski -- now I guess they're placing more of the enforcement on the business itself, enforcing a business to hire its own people to police itself. And then they have the inspectors coming to make sure that they do.

Well the bottom line here is, in order to properly comply and be able to police yourself, you have to have enough people to do that.

This right here is what I had to prepare in the late 1990s, in order for John to be able to come back in business.

It's mind bogglingly specific, it's outrageously absurd, and it basically calls for John to have different people working for him as sanitation supervisors.

I mean this is a small business. He employs maybe ten to fifteen people, twenty people at the most. And for these people to insist upon this business having different people basically watching over what the other people are doing is total absurdity, and it's also economically infeasible.

And I guess what we're desperately wondering is what could be done for a guy like John Krusinski and when can he reopen his business, because I've got to tell you, he makes the finest kielbasa in America. The guy is just a flat genius. I mean his hot dogs are outstanding.

At one point in time the Cleveland Indians in the '80s bought his Polish sausage for 65 cents a crack and resold it for \$3.65 a crack. Anything that could be sold for \$3.65 in the '80s that's put on a bun had to be pretty damn good. So the guy is a food genius and he is not able to produce the way he should be.

Right now (inaudible) would love to have this guy's product, his meat product because he is one of few people who produces ethnic meat products. Ethnic meat products like Herdka, Smokeys, Kielbasa, Cabbage Peppers, and Stuffed Cabbage Peppers. I mean these are unique products and his hot dogs and wieners are outstanding. I mean his pirogues -- they are able to survive because the FDA is not anywhere near as bad as the USDA.

Now I know we only have so much time, but let me just close with this. During the height of the absurdity when John was being just absolutely embarrassingly discriminated against by the United States government, John said to me -- he said you know what Mark? He said I was in Nazi concentration camps and I spent time in a German hospital after the war, and I think the American government is worse than the Nazi government was.

You might laugh -- except after all we wrote the history books and the German government under Hitler was obviously the worse in atrocities.

But for a man to even sit there and say something like that ought to make everybody associated with the United States government and everybody who has treated him so ridiculously absurdly over the years -- just needs to be damned ashamed, just ashamed.

And one more thing, we can laugh about what we said about the Nazi government and the American government in comparison. But lets remember that there's only one person in this room who can make that comparison, only one. Nobody else in this room I'll bet was ever associated with or ever involved themselves with the Nazi government.

Only John was in a concentration camp. Only John can make the comparison between what happened to him by the American government and the American Regulatory system, and what happened to him when he was in a concentration camp as a Polish citizen. And he says the American government was worse.

MR. BARRERA: All right, I appreciate your comments. Mr. Krusinski, I appreciate you coming. I will say this, as we have

to open this up for questions -- but on behalf of the American government, I don't think anybody wants to be compared to Nazis. I don't think anyone's taking offense to that, but I don't think anyone's is going to want to compare Nazism to what you went through, sir, as far as what's going on here.

MR. KRUSINSKI: Can I answer that?

MR. BARRERA: I would like you to. I would prefer you do.

MR. KRUSINSKI: Okay. First of all, I'm the man (inaudible). In my place, two federal government inspectors working for me, one was working nights and one was working days. They were two SS and I didn't know for over five years until one lady comes from Poland and recognized Jerry Fisher -- that Jerry Fisher's uncle was going with his sister.

And that's all that started -- they were after me for all that stuff -- that all the time that they were going to get me out of business. This is why I'm here and I was not even allowed to go with Judge (inaudible) to testify (inaudible) Ivan the Terrible (inaudible).

And his numbers were scratched out under his arm and surgery done. And he told me, you know, that you better be quiet. That our government over here doesn't even want to know that (inaudible) who was in Israel killed an official person pushed him out (inaudible) accident. They always ask me for that.

MR. BARRERA: Okay. We are going to try to keep the focus just on your regulatory problems here because these are obviously important issues to you.

I think for the fairness of those who are here and being fair to you, we want to keep it just on the regulatory issues that you face today.

Otherwise we'll be getting into some issues that are really outside of what I can help or begin to help you with, or have the jurisdiction to help you with. The only thing that my particular office can help you with is the regulatory member fairness. Those are the regulatory issues that you face here today. Before we move on --

MR. KAISER: What can you do?

MR. BARRERA: Let me go over some questions first, so I can tell you what we can and cannot do. Our issues are just

with federal agencies that are treating you today, the regulatory enforcement actions that they are treating you with today.

I think what you've been talking about (inaudible) situation. If you're a small meat producer -- you know we have some USDA here and as the (Inaudible) controls, now there are teams that will inspect you.

Now under (Inaudible), they expect you to do your own inspection program and then they check you on that inspection program.

But let me ask some questions here -- and then we're going to actually ask you some questions then we'll kind of (inaudible). We have someone here from the USDA that heard the testimony and I'm going to have him maybe talk to you, then come back and tell us what -- give a summary on.

But in order to be a fair Ombudsman, we're going to hear both sides. So I want to hear his side also (inaudible) questions.

MALE SPEAKER: First of all Mr. Krusinski, I as an American citizen apologize to you for giving (inaudible).

My first question really is, which agency or agencies did you (inaudible) that caused you (inaudible).

MR. KRUSINSKI: First of all, I opened up the business on the West Side of Cleveland. They didn't have no inspector trained for ethnic food inspection.

MALE SPEAKER: Which agency?

MR. KRUSINSKI: Agriculture.

MR. BARRERA: Was that the federal Agriculture or state?

MR. KRUSINSKI: Federal.

MR. BARRERA: Okay.

MALE SPEAKER: The second question with that, as I tried to listen to what your attorney was saying -- that you were okay by the local level. Is that what I understand? The local inspectors had no problem with your operation?

MR. KRUSINSKI: Never.

MALE SPEAKER: Just a question. Did you mention that your local level inspectors were not having a problem with you to the federal inspectors and what was their response?

MR. KRUSINSKI: The local inspectors were informed by higher inspectors not to talk to me at all. That somebody else has to be in between me and the inspectors. That was not called for. I was not to be able to talk to the inspectors by myself.

MR. KAISER: He is misunderstanding you. He is talking in terms of the local inspector being the federal inspector, or who's on site at the plant.

MR. BARRERA: The local federal inspector?

MR. KAISER: Yeah. What he is asking you John is, did you ever tell the federal inspectors that the city of Cleveland's inspectors never had any problem with you?

MR. KRUSINSKI: No, we never had a problem.

MR. KAISER: I know but did you ever tell the federal government that you never had a problem?

MR. KRUSINSKI: Absolutely.

MR. KAISER: Okay, that's what he is asking.

MALE SPEAKER: Thank you, Mr. Krusinski.

MALE SPEAKER: I don't have any questions but coming from a small town in which we have a second-generation meat processor, I appreciate the problems. I think it's absolutely unthinkable the treatment that this gentleman has received and I'm appalled.

MALE SPEAKER: (Inaudible) no comments.

MR. BARRERA: First of all I want to suggest -- you asked what we can do. Okay, I don't think you got here until the end of the -- were you here during the Power Point presentation that we did?

Okay, what our office does is that we work with these agencies and we actually bring them to the hearings so they can hear what your concerns are.

What we do is we ask that -- you know, what we talked about, it would help us a lot if you can give us maybe a short summary of what you're going through and focus on what situation

you're going through today.

What we do then is we send it to people at high levels within the USDA when we get back and they will actually give us a response to your concerns. Then we get that response and send it directly to you -- what their response is. And we grade them on that response. We don't necessarily promise to get you the answer you want. We promise to get you an answer one way or the other.

So what I'm going to ask you to do right now is what we've done here with the IRS just a second ago -- is we have the USDA Rep here.

If you wouldn't mind stepping outside to talk to him about it a little bit and then at the end of this, we're going to actually call the Reps from the IRS that were here, and the USDA, and have them maybe give their side and see if we can maybe work toward resolution on some of these things.

But again, sir, none of us here could really appreciate what you've gone through. None of us can. (Inaudible) here in the government but that's one reason why my office was created because of the actions that you've described, because of the abuses that you've described, and we're trying to change that overall attitude from government agencies.

But please talk to the gentleman. He is right in the back there. And we'll hear from some other folks and then have him give a response. Please do not leave, okay? The person from the USDA is right back there.

While they're talking we're going to go ahead and hear from James Devoe.

MR. DEVOE: Good afternoon.

MR. BARRERA: Mr. Devoe, thank you. Do you want to state your name and --

MR. DEVOE: My name is James Devoe. I'm an officer and a principal in Omega Laboratories. We are an illegal drug testing company in (Inaudible), Ohio, which for those of you who aren't from this part of the country, it's a suburb of Akron. It's about 30 miles from here.

MR. BARRERA: Did you say legal or illegal?

MR. DEVOE: Illegal drug testing for employment, for --

MR. BARRERA: Oh, I see.

(Laughter)

MR. DEVOE: I was not looking for the DEA to step up here and give me --

MR. BARRERA: We have officers right outside there.

(Laughter)

MR. DEVOE: We have previously submitted our testimony electronically but I have copies of it here so perhaps in the interest of whatever, I'll just read it and then we go from there. May I ask you to hand this out to the gentlemen in front? Thank you.

We've been in business since 2000. We are approximately 13/14 people. Our sales are under a million dollars but we have virtually an unlimited future if we can get some regulations straightened out and that's why we're here.

And so if I may I'll just read our testimony and then we can do however you want to do it, okay?

MR. BARRERA: Okay.

MR. DEVOE: Omega Laboratories seeks to have the mandatory guidelines for workplace drug testing programs, and these are them downloaded from the Internet just this morning, published in the Federal Register -- has been promised for over two years.

Hair testing, which is our principal business -- hair testing, not urine testing but hair testing for illegal drugs has been existence for 13 years. It has two distinct advantages over urine tests.

Hair testing provides a 90-day history of drug use versus two to three days for urine tests. And unlike urine tests, hair tests cannot be adulterated or cheated. You can study for a urine test and that is just abstain from using drugs for three days and you'll test negative and then you can go back to your old nasty habits.

Our business is threatened because appropriate agencies within Health and Human Services have yet to recognize hair testing as a viable testing protocol, even though the latest proposed revision to the guidelines -- hair testing is in here -
- establish standards for hair testing, including cutoffs,

collection procedures, and reasons for the test.

We have been advised that these revisions have been expected to gain approval "soon", for over two years. All federal government drug testing, that's the Department of Transportation, military, and federal employees, must be Health and Human Service guidelines and we are precluded from this business even though hair testing is known to be a superior testing protocol for the reasons I gave you earlier; 90-day history versus two to three days and you can't cheat hair testing.

Hair testing is gaining strong support in private industry. Most the top Fortune 100 companies use hair testing independent of federal guidelines.

However recent developments in Ohio demonstrate how the lack of Health and Human Service approval is directly threatening our business.

Ohio's Bureau of Workman's Compensation offers a premium discount if the company has a drug-testing program. The program requires a federally approved drug testing protocol and corporate clients who prefer hair testing must send their business to a federally approved urine program to earn the discount.

We (inaudible) to have these guidelines as published -- in draft form, published in the Federal Register has been promised to us on a quarterly basis for over two years.

Now what was not in our electronically submitted testimony is the following. Recently the congressional subcommittee for Health, chaired by Representative Michael Filarockus of Florida, asked Secretary Thompson to intervene to facilitate approval of alternative (inaudible), that's hair testing to strengthen the country's drug testing programs.

This is precipitated by the growing body of evidence showing that urine tests are flawed and that currently approved testing protocols are inadequate in the fight against illegal drugs.

That was the electronic that we submitted. Here's a handout if I may. This is from Drug and Alcohol Testing Industry News and at that bottom, it says, Congress calls for termination of drug testing advisory board and indicates that on February 25, 2003, House Energy and Commerce Oversight Investigation Subcommittee Chairman, James Greenwood, a

Republican of Pennsylvania called on Secretary Thompson to get involved and facilitate this thing.

And while I've highlighted in green what the sense of urgency is, I think the last sentence in this thing tells the tale.

Representative Greenwood insists that drug testing in the federal workplace should be stronger and this can only happen by introducing and accepting alternative specimens in Health and Human Services guidelines.

And that gentlemen, is what we seek to have happened, is just to have these things published. They're standing in the way of our business, which has an unlimited future but we can't go there until these things get published.

MR. BARRERA: So they've been approved they just haven't been published?

MR. DEVOE: John, do you want to help me with this thing?

MR. BARRERA: John, introduce yourself.

DR. MATULLA: I'm John Matulla.

MR. DEVOE: Dr. Matualla is founder and CEO of Omega Laboratories.

DR. MATULLA: And the question was --

MR. BARRERA: They've been approved but not published?

DR. MATULLA: No, they're in the draft (inaudible) guidelines. Under Health and Human Services, this is under the Substance Abuse Mental Health Services Administration.

Under that there was DTAB, the Drug Testing Advisory Board. And under that there was the hair testing working group. My partner was a member of that.

The industry has already pretty much agreed on what the guidelines should be, the cut off should be. So they've gone through a series of guidelines.

The next step is to have them published in the Federal Register and then there will be a period of public comment, probably extended -- probably about 120 days, after which they would be published.

So yeah, they have been approved by everyone who's able to approve them but they have not been published yet.

MR. BARRERA: What sub-agency of HHS are you actually working with?

DR. MATULLA: SAMSA, which would be the Substance Abuse Mental Health Service Administration. The division of workplace drug testing is run by Robert Stevenson. And on what we submitted, I did list him as the contact with his phone number.

So that's basically where it sits right now. So what we are asking is just have these people publish this thing as they have said they are going to do.

MR. BARRERA: What type of responses -- when you try to contact them, what do they tell you?

DR. MATULLA: Well they've told us it was going to happen -- every time that they come up with a new guideline, they have told us that it was going to be published soon but they've been saying this for two years and then the next meeting comes and they just keep delaying.

I think a couple of things were happening. The urine labs -- you know, the big urine labs, they do 30,000-35,000 tests a day of federally approved urine testing.

Urine testing is a very difficult thing to do. There are only five or six laboratories in the country and there's only a small group of people that can set one up. I'm not one of them. My partner is.

And so I think they're trying to buy some time until they get their own hair laboratory set up. I know Quest Diagnostics, the biggest lab in the world has actually just purchased a hair lab, and the second largest lab is actually using us to do the hair testing.

I think one of the holdups is proficiency testing programs. The government has subbed that out to Research Triangle Park and they do proficiency testing. We've been in a voluntary program for three years. There are five labs that are in that program. They perform very well.

They have not yet come up with those final guidelines on how they're going to test us because you know, if you're going to have a laboratory doing federal work, you're going to want to make sure that they're passing proficiency guidelines every three months or so.

And I think that's where the holdup might be but that should be -- even that has been taken care of. I mean it just looks like there are some delay tactics going on.

We have a case history -- one of our clients does DOT urine tests for the drivers. If you're an over the road driver, you do a DOT urine test.

They all do hair testing pre-employment and an applicant to drive one of their 18-wheelers passed a DOT urine test and flunked big time the hair test, which says a drug user -- that individual had been a drug user, abstained for five days, passed the urine test. If it hadn't been for the hair test, that person would have been driving an 18-wheeler out there on the roads.

So hair testing is a much better testing protocol and we want to see that expanded not only for us, but for the war against drugs.

MALE SPEAKER: When you're talking to the people in Washington I'm assuming -- do you talk to the same person each time?

DR. MATULLA: No.

MALE SPEAKER: Why not?

DR. MATULLA: Well there are so many different people involved. I mean my partner knows the people on the Drug Testing Advisory Board so we'll call them. We'll talk to people in Mr. Stevenson's office. So we do talk to different people. That's probably a good point.

MALE SPEAKER: Yeah. Well my follow-up question is, why don't you talk to (inaudible) and insist on doing that?

DR. MATULLA: And we will. We've done that. We've talk to one person more than once. I mean that's not the issue. But every time -- you know, they meet quarterly and every time they meet it seems like it just gets delayed.

What delayed it recently is that specimen validity testing. That's a urine thing to make sure that somebody did not cheat a urine test. Right now they're finding -- there's a big case that was in the news -- was the flight attendants with Delta Airlines. She gave a urine test and they said that she tried to cheat it but she didn't.

But the guidelines of urine are flawed and so they have been like back tracking trying to cover their bases on this and they've been spending probably the last part of 18 months -- most of the 18 months trying to figure out how to handle this and so that's been holding it up as well.

MR. DEVOE: The minutes of the meetings, they're available. They're published and they're available.

MALE SPEAKER: So when you present them to whomever you're speaking to, minutes don't contain anything as to when they're going to (inaudible).

MR. DEVOE: They mention alternative guidelines in every minutes of every meeting and they just say, it's moving along great. You know, not as fast as we'd like but we're moving along.

And they just keep saying they're moving along on it but it's been delayed now for six times over a three-year period and that's when Representative Greenwood said that they called for termination of the board for their inaction on it.

MALE SPEAKER: So it seems that each time something happens, so that they can't pass on it?

MR. DEVOE: Yeah, correct. It's little things that --

MR. BARRERA: (Inaudible) part of the competition and bureaucracy (inaudible).

MR. DEVOE: Oh, yeah. It's a matter of science being ahead of the bureaucracy a lot and it happens. That's natural.

MR. BARRERA: What we'll do is we'll send it to the HHS, (inaudible) and make sure they at least get you and answer to what's going on.

MR. DEVOE: Right, exactly.

MR. BARRERA: (Inaudible) at least get you answer.

MR. DEVOE: That's all we can ask for. As you will see, the guidelines going around, hair, sweat, oral fluids are all mentioned with urine as equal testing protocols and it's all set to go if we can just get them to let it go. That's what's we want to have (inaudible).

MR. BARRERA: When you can expect it to happen.

MR. DEVOE: Yes.

MR. BARRERA: Thank you, I appreciate it.

MALE SPEAKER: One more thing (inaudible) person that you've been talking to, to send them a certified letter. Have you done that?

MR. DEVOE: No, we have not.

MALE SPEAKER: Okay.

MALE SPEAKER: We heard that earlier (inaudible).

MALE SPEAKER: How many delays? Did you mention earlier six?

MR. DEVOE: Yes. In the (Inaudible) article, which you'll see, I don't know if this is in that particular article or another one that I may have, they have delayed it six times over the last couple of years.

MALE SPEAKER: And was it consistently the same language in the response, that that's being addressed, we're getting to it?

MR. DEVOE: Exactly, right. We've still got to do this, and do this, and do this.

MALE SPEAKER: So that's been consistent?

MR. DEVOE: Sure, pretty much. You're welcome to keep those guidelines if you'd like (inaudible) in case you really have trouble sleeping.

(Laughter)

That's a lot of fun to read those. I'd like to thank you and I'd also like to thank the volunteers on the Board. Thank you very much for (inaudible) case.

MR. BARRERA: Thank you. We have John Capozzi.

MR. CAPOZZI: Hi. I'm John Capozzi and this is my daughter Ruth Ann. I have a small cabinet shop in Warren, Ohio. I've been in business about 30 years and I've been -- it's been like a one man to a ten-man operation in the past 30-31 years.

About eight years the Ohio EPA came in and apparently a disgruntled employee said that I was burning -- and I wasn't

disposing of my chemicals like my thinners, my waste, and the correct way.

But we have to remember that to put it into perspective, it's a very small company and our (inaudible) was about maybe five percent of our business.

And I will admit that I did do some things wrong but the reason I'm here today is for -- like I said, the past eight years I've been fighting the EPA. I started out with the Ohio EPA. It's been one big negative experience.

I did everything they wanted me to do. I tested the water, had some of the ground dug up and had everything tested and everything tested fine.

We had to dig up two sections of my property, roughly about two sections about 10' by 10' by about 12 inches deep and it was tested and I was able to just throw what we tested -- throw the soil back in.

In other words I didn't have to dispose -- so to me -- oh, they found some high levels of arsenic is what they said but it's common in this area to have high levels of arsenic I believe in the soil. That's a natural thing.

And it seemed like at one point the Ohio EPA kind of backed off and then the federal EPA got involved and they -- I guess I broke a lot of regulations and like the gentleman before with the butcher, apparently EPA has regulations, you know, that being a small businessman I just -- number one, we don't have time to be -- we don't understand half the regulations.

So they fined me \$788,000. Now mind you, my business that year -- over the past eight years, the highest I've grossed -- my highest sales were around \$400,000.

So then they scheduled an administrative hearing and right before the administrative hearing, they said well we're going to drop this down to \$275,000. So we had the administrative hearing and the judge -- after a couple of years they came back and decided well -- they lowered my fine to \$37,000.

So then the U.S. EPA didn't like that. They appealed that decision and mind you the judge at the administrative hearing, he was an EPA judge if I'm not mistaken.

So they appealed that and then I guess the ruling came back about six or eight weeks ago that the \$37,000 is what they would settle for.

MR. BARRERA: It went through the appeal?

MR. CAPOZZI: Yes. I wanted to appeal that because I think that it's ridiculous what I went through for eight years.

At the administrative hearing they actually flew in a judge from Washington. They flew in half of the staff I think from their department in Chicago. It took them a day to just talk about the regulations that I broke.

MR. BARRERA: How much money do you think you spent?

MR. CAPOZZI: Oh, well my lawyer -- between lawyers and consultants I have about \$30,000.

MR. BARRERA: Does that take into consideration the time you spent?

MR. CAPOZZI: Oh, no. I mean time and the effort -- the time that I took away from my business and

-- yeah, it was a horrible experience.

In a way I'm happy it's over and there's -- all I have to do is be able to come up with the \$37,000 and they also -- now the interest is starting.

So that's my next -- like I said, I believe in regulations but this is -- to me it's ridiculous what they've put my small business through. It's unbelievable. I just can't comprehend. They have not one ounce of common sense. Do you have a comment?

MS. BRAY: Yes. My name is Janice Ruth Ann Capozzi Bray. I'm John's daughter. And I was with him at the time that the EPA came. I was employed by my father so I work at the shop. I was working there at that time.

When the two people came in from the Ohio -- one was from the Ohio EPA, one was from Betty Montgomery's office, who is the Bureau of Criminal Investigation.

When they came into the shop, they came in with a badge telling us, you need to tell us -- you've been reported for this and you need to tell us everything because if not you can go to jail now.

We didn't think well maybe we should call somebody. We really didn't feel that it was -- that it could snowball into something so big. And it has been so blown out of proportion for the size of our shop, we might as well have 250 people for

the way that we're being treated.

And again, I would have to reiterate what my father said, as far as the people -- they had a federal judge come in from D.C. They had at least two lawyers that were flown in from Chicago to hear this case. We did have to --

MR. CAPOZZI: They had accountants, they had -- I'm telling you, they had six or seven of their office there just to -- and the regulations that they said -- I mean you might as well speak a different language to me.

Of course I had a lawyer and my lawyer definitely makes three times, four times the money I had to pay her, which I mean -- I tried to fight this and it was just --

MS. BRAY: And that's where the problem came. If we would have said, you know, we did this and you're right, it would have stopped with the Ohio EPA. But because we said, what did we do that was so wrong, then they take it to the federal level.

And it's also unbelievable to me that they don't consider where it came from. They went to someone's house at two o'clock in the afternoon. There were three people -- we knew exactly who it was who would say this. They didn't consider the source whatsoever. They went to their house and came directly to our shop with these accusations.

MALE SPEAKER: I'd like to ask you a quick question. What kind of evidence were they able to produce to support the accusations of the person? They did soil sampling?

MR. CAPOZZI: Oh, yeah, they did soil samples.

MALE SPEAKER: Did they do a benchmark -- did you hire or did your lawyer work with an independent --

MR. CAPOZZI: Well here's what happened. They came in and they took a sample because I admitted, yes, sometimes I'll take a little bit of thinner and I throw it out the back door. And that's where I went wrong. You know, I should have never been --

MS. BRAY: We shouldn't have been honest. I mean that's the bottom line.

MR. CAPOZZI: I really thought it was so ridiculous that I didn't think that -- I was really naïve about it.

So they took a couple of samples at that point and they said they found something and it's all -- like I said, it's a different language to me.

MALE SPEAKER: And it snowballed from there.

MR. CAPOZZI: Yes. And then they took a water sample and they said that it's contaminated. And so the next sample I had my lawyer, my consultant there.

So they took another sample and we had our sample back in like two weeks. Six months we didn't hear from them and when we did hear from them they said it was contaminated.

We took another one, and together again, EPA, my lawyer, my consultant, and the water was fine. My lawyer claims that they let their sample sit too long. They didn't get on it -- you know, but they agreed that the water was fine.

And I did break regulations like I said and I do -- and I would expect to pay a reasonable fine because I agree that you have to -- the environment is very important.

But let's get -- I don't know. I don't understand the law. I understand it's the same if you drop a drop-full of thinner on the ground as if you dropped 500 gallons on the ground. Is that true? Can somebody answer that?

MS. BRAY: I mean these are things that come up, which are absurd. Just as the lawyer sat here with the gentleman with the pirogues, I can relate 100 percent to what that gentleman was saying.

For example, when they took the water sample, there is an elementary school nearby and there's also a church. They took samples at the elementary school and they told the people Capozzi Cabinets has contaminated the water or could have contaminated the water.

When it came back okay, they never bothered to go back to the school and say, your water is okay and it wasn't contaminated by Capozzi Cabinets.

When they went to the church, which is a very small church -- they have maybe 50 people that go there. They thought there was something wrong with the well so in turn this church that has a very small congregation, had to do something to get their well upgraded.

I mean it just snowballed. It's absurd, and ridiculous,

and out of control between what our government spent and what we had to spend for a cabinet shop that employed at it's height ten people and right now there are a total of five. It's absurd.

MALE SPEAKER: Can I ask a question? Do you still monitor wells or water?

MR. CAPOZZI: No.

MS. BRAY: What do you mean as far monitor?

MR. CAPOZZI: (Inaudible). Did you have another question, I'm sorry?

MALE SPEAKER: No, it was just that you were referring to (inaudible) benchmarks over time.

MALE SPEAKER: Benchmarks over time meaning that you're still monitored, how long has it been since the wells or water have been monitored?

MS. BRAY: The water, like I don't know --

MALE SPEAKER: What they were complaining about.

MR. CAPOZZI: Yeah. Well we haven't checked it since then.

MALE SPEAKER: So how long ago was that?

MR. CAPOZZI: About six or seven years.

MALE SPEAKER: Six or seven years. So during that six or seven years, there has been no monitoring or testing since then?

MR. CAPOZZI: No, no.

MALE SPEAKER: So essentially -- have they cleared you now so that --

MR. CAPOZZI: I have no -- I think so, yes, because as far as I know -- I mean I'm in compliance. They made me -- which I should have had -- I got a 55-gallon drum and that's where they told me to throw my waste.

Well I got that 55-gallon drum in May of 1995 or May of 1996, and I just called yesterday to have it emptied. That's how much chemicals I use.

MALE SPEAKER: I think from my standpoint, I would

suggest that you ask if you're cleared now.

MR. CAPOZZI: I think I did. I think I asked my lawyer and I --

MALE SPEAKER: Okay, make sure of that and then the next thing would be if that's the case, that you are exonerated to whenever time. So you get time and a date that you have no more responsibilities --

MR. CAPOZZI: Oh, okay.

MR. BARRERA: Based on that, you're comfortable with us taking your comments and --

MR. CAPOZZI: Oh, absolutely.

MR. BARRERA: If you like -- put them in writing what you've just told us because this is stuff that we need to hear and you made a great point.

We talked about how regulations cost the economy \$30,000 -- \$7,000 per year per employee. And you're a perfect example. It's not just you're out hard cost. It's your time and what the government spent having to come to work with this.

That's money they could have spent -- all that time and money they spent going after you, they could have spent trying to help you and a bunch of other businesses. They could have bought you the barrel.

(Laughter)

MR. CAPOZZI: Oh, yeah. That's what I can't comprehend, how much money we as taxpayers pay for them to prosecute me -- or not prosecute me but to fine me, to go through all this.

And they had to prepare a case and I forget -- my lawyer told me that they sent -- on their appeal they sent like a 100-page letter or something to appeal -- to try to get a larger fine.

MR. BARRERA: (Inaudible) regulations being smart. You said yourself, we've got to have them.

MR. CAPOZZI: Oh, absolutely.

MR. BARRERA: (Inaudible). You know -- EPA, you know, there are some folks out there (inaudible) and we've got to make sure people are smart about it. You know, if you've got nobody

working, you're not going to have tax money to make sure that you do have -- keep the environment clean.

MR. CAPOZZI: And I am conditionally exempt because of my status as a small business -- I mean the number of employees I have. I forget what exactly -- what that means is I'm not -- there's certain things that I'm exempt from.

In other words if I had 15 people working then I would be responsible for maybe filing how much thinner I use a month or how much painting I'm doing because I didn't even need a clean air --

MR. BARRERA: It's to promote job growth --

MR. CAPOZZI: Oh, absolutely not.

MS. BRAY: No, it doesn't and again it tells you we're being treated -- we might as well have 500 employees the way that we're being treated.

And also I feel that -- you know, I mean this has caused so much grief in our family and it is such a burden. It's an unbelievable burden to have the federal government on your back like this.

And like my dad said, you know, he is relieved that we're getting to that point, but we certainly feel like we've paid enough in the emotional toll that we've taken, aside from the money that we have had to pay to consultants, to lawyers, the time that we've spent going to federal court and trying to talk to people -- that we have certainly paid enough.

MR. BARRERA: Be sure to include that in all your testimony. We're going to need to wrap this one up. Be sure to include that in all your testimony and send that in and we'll get EPA to get you an answer with what's going on.

At least people will be looking at this stuff because your testimony will be posted on the website and we invite all the congressional representatives to look at these things to hear what's going on so this stuff is not being hid.

MR. CAPOZZI: Okay.

MR. BARRERA: Thanks.

MALE SPEAKER: There's one more thing you might want to think about (inaudible). You don't need to tell us but there might be dollar amount that you would want to submit to try and

settle. That's totally (inaudible). You don't need to respond. I'm just saying that's something --

MR. CAPOZZI: Yeah. Well in closing, I got to the point where if I would have had the money for the fine I'd have paid it and I would not have even -- because I am tired. I'm really tired. I need closure.

MS. BRAY: And it feels like also that -- again, it was that they're wearing us down. It's like that's what they want. But thank you so much for caring.

MR. BARRERA: Thank you. Good luck to you.

MS. BRAY: Thank you so much.

MR. BARRERA: We've got (Inaudible). Okay, he couldn't make it. I will say that one woman had scheduled to testify, Dinah Leech and she had (inaudible) IRS about an abatement but she just settled with the IRS -- that her tax thing was abated so it got settled and she wanted to call and thank the IRS for getting that done.

(Laughter)

So we had success before we even got started. So with that, I'm going to invite the IRS to come and respond to Mr. Scott's testimony.

MALE SPEAKER: There were a couple of issues that were raised. One of the issues has to do with release of liens that were filed in the courthouse and I think we can make sure that that occurs.

And he has my card and I've asked him to give me a call. He has been promised now that they're going to be released but we will follow-up to make sure that they are.

The other issue that he presented, presents more difficulty and that is that he has a series of accounts that have payments, and interests, and penalties on them. But the trouble is, is that they're in old years. They're in years from 1996 -- '89 to '96.

And advice for other people, there is a statute of limitations on actions that the IRS will take and sometimes that works in your favor if you're talking about auditing your tax return. You've only got three years to do that unless there's fraud.

But sometimes it works to your detriment and that is when you can file claims to ask for additional monies to be sent back.

So in his particular case if he has had to pay interest and penalties on these old years, there's a two-year statute of limitations on filing the claim for those items.

So even if you're 100 percent right, we can't do anything about it if you're passed that statute of limitations.

Now as the Advocates Office in IRS, we have asked Congress to look at that. In our prior reports to Congress -- to talk about unusual situations where we think that there ought to be some way to open up the statute of limitations in particular situations.

But so far nothing has been passed in that arena because as I was explaining to Mr. Scott, I've seen even more egregious situations where the statute has kept us from refunding money to people that we know for sure that they were 100 percent overpaid and nobody would question whether it was right or not.

So I think we can deal with the issue of the liens and make sure that they get released and that probably is one of the issues he is dealing with trying to get loans and things like that. That is definitely harmful to have those sitting out there if they've been paid.

Do you have any other comments you want to make?

MR. SCOTT: No, that's pretty much it and I want to thank you fellows.

MR. BARRERA: Thank you. And if you wouldn't mind, be sure and send us a little one-page summary of what you said here today. We'll send it to Gary and that way he has it in writing.

(Laughter)

As Mr. (Inaudible) said earlier, if you have it in writing that always helps out. And we actually have the IRS trying to pass legislation so they can give money back to the taxpayer. That's really kind of a new attitude that's happening. And again, I think (inaudible) is not perfect but it's changing the attitude to change, so we do appreciate that.

And actually we just had someone else who said they wanted to testify, Mr. Burton.

MR. BURTON: Yes.

MR. BARRERA: We limit it to five minutes and (inaudible).

MALE SPEAKER: I just have one question. Is it working well for you?

MALE SPEAKER: Yes.

MALE SPEAKER: Thank you.

MR. BURTON: This will only take a few minutes because I'm talking about just what they were talking about, paying taxes.

I have two letters -- a claim for refund and request for abatement. Here's one of them, and here's another one from Internal Revenue downtown. And they admitted that they owe us some money and yet turn it right back around and they say taxpayer account -- "Thank you for your correspondence on December 18, 2001, December 18th. We have not resolved this matter because we haven't completed all the" -- that was one.

Then they turned right back around with another letter and said it took too long. "This letter is your legal notice that we have disallowed your claims. We can't allow your claim for refund or credit for the period shown above, for the reason that's above. We can't allow a claim for credit or refund if you filed the claim more than three years after you filed the return."

Now I got very upset about this because I paid them ever since 1987. Then later stopped paying in 1992 because they said it was paid, okay?

We told them from day one we never owed them the money, so they (inaudible) this payment -- '92 they said it was paid up. Turned right back around in '93, and came up with another one, said we owed the money again, the same amount.

And I went downtown and raised all kind of heck. They didn't want to hear it. They said you pay or else, so what can you do with them. You (inaudible) paid. So we paid again.

And in '99, they had (inaudible) Internal Revenue so we made an appointment to go down and talk to them. We explained everything to them and the lady (inaudible) to listen to us, went back checked everything and that's when she wrote we never owed them.

We showed them letters from Columbus that said we never owed -- Columbus money -- so therefore we don't owe them money and they said it right here as they fined us, okay, well we'll pay your money back.

They (inaudible) to look at everything and they said they were going to give us money right here.

MR. BARRERA: What was the date?

MR. BURTON: This date is 12/18/01, December 18th (inaudible).

MR. BARRERA: That's one, okay.

MR. BURTON: Okay, that's one of them and here's the same one the same date, December of 2001. And they said they will give us money back. In 2002, that's when they wrote the letter about it was too late -- too much time had -- over ten years or something like that -- three years.

I mean they told us to stop paying and yet in the same breath the next year they're going to say it's too late for them to give our money back. Now that is double talk.

Everybody we talk to, all they do is shake their head. I know the people with the Internal Revenue, all they can do is say -- they said it. Nothing they can do. Just keep going at them because they owe you the money.

MR. BARRERA: A question, when you got the letter in December 18, 2001, it said that they owed you money?

MR. BURTON: Yes.

MR. BARRERA: Did you immediately response to them?

MR. BURTON: Well yes, they wrote the letter. I mean they sent me -- they made out the vouchers for them to pay us -- the allotment right here.

MR. BARRERA: Okay. You never got the money.

MR. BURTON: Plan to refund and request for abatement, right here. They wrote it out and yet they turn back around that summer and said it was too late for them to pay us and we've been paying for 12 years. Now they're going to tell us a half a year later that it's too late.

MR. BARRERA: How much was it?

MR. BURTON: A total of \$11,000, little bit over \$11,000.

MR. BARRERA: Okay. Again, we're going to hear from a couple other agencies, and maybe Tom McGeary real quick here -- and this is the person that you want to talk.

MR. BURTON: Thank you. That's all I wanted to hear.

MR. BARRERA: You want someone to talk to. I understand that.

MR. BURTON: That's all -- I've been going out here and getting upset and all they're doing is doing their job.

MR. BARRERA: If you wouldn't mind, be sure and keep copies of all of those for us.

MR. BURTON: Oh, yes, oh, yes.

MR. BARRERA: And send us a little written thing. You can go to our website or Gil here can help you fill out a little form to send it to us. Gil, we can follow-up with it also. We'll have two people on your side looking into this for you.

MR. BURTON: I really appreciate this because I've been downtown at the building that's got (inaudible) and they tell me there's nothing they can do.

MR. BARRERA: And be sure to give us your name and address so we can follow-up with you.

MR. BURTON: Yes, sir, definitely.

MR. BARRERA: I appreciate you coming, sir.

MR. BURTON: I appreciate this help.

MR. BARRERA: We have two people to help you right now.

MR. BURTON: Thank you now.

MR. BARRERA: And Mr. Scott, be sure and speak with Gil about some of your concerns regarding the SBA.

Okay, you want to introduce yourself real quick before you go?

MALE SPEAKER: Well I didn't know I would be here but I was told to come and (inaudible). I'm the (inaudible) but I am also the (inaudible) for all small business in (inaudible).

Last year I was assigned by the (Inaudible) Director to be

Ombudsman. I didn't know what to do so (inaudible) so we might have some of those things. So that's what we did.

(Inaudible) for four years EEOC, the Equal Opportunity (Inaudible).

MR. BARRERA: And it's good you have no complaints. You're doing a good job.

(Laughter)

MR. BARRERA: We're going to go ahead and hear from USDA. Are they here or did they --

MALE SPEAKER: He'll be right back.

MR. BARRERA: Okay. Do you guys want to come back up and speak, Mr. Krusinski and make a comment about the meeting you had with them?

MR. KAISER: We were just wondering how the process was playing itself out.

MR. BARRERA: Okay, what we'll ask you to do is -- you can give us some written testimony if you can because otherwise it's going to take a good 60 to 90 days to get this hearing transcribed.

The reason we wait for the transcription is to make sure that we've got it written down and it's recorded properly so it's not just my notes or somebody else's notes.

I guarantee you if the four of us wrote notes down, and you're an attorney -- you know if four people write notes down, they all could come out differently about what was said.

So we wait for the actual transcription or we ask that you send us a written summary of what you testified to. Then we can send it directly to the agency there and ask them to provide an answer to your concerns and the things that you laid out for us.

MR. KAISER: To whom do we send it?

MR. BARRERA: Send it to my office. Go to our website, www.sba.gov, and there's a backslash, ombudsman.

MR. KAISER: Which way is the backslash, that way or that way?

MR. BARRERA: Back this way. Or just go to the SBA

website.

MR. KAISER: People ask me what kind of computer I've got. I tell I used to have a green one now I've got a brown one.

MR. BARRERA: Okay, fill that out and send it to the address it has on there. You can send it by mail but send it by express mail because if you send it regular government mail with all the stuff that they do to mail now, it will take a month. So it's best to overnight it or you can e-mail it to us.

You can go to the website, fill out that form on the website and then e-mail it to us. If you go to the SBA website www.sba.gov, I actually have a button there for ombudsman. You just punch on that and you can download the (inaudible) on that. It's pretty easy.

USDA, do you want to possibly come up and introduce yourself and comment on what you guys discussed?

MALE SPEAKER: Well there's not much I can do to help but one of the things that I kind of wanted to find out from you folks is, what is the next step as far as your involvement in all of the issues that are at hand?

MR. BARRERA: I think it would be helpful if we can kind of maybe focus in on what the issue exactly was. First of all, was it HASEP issue? Is that what we're talking about?

MALE SPEAKER: It sounds like that there were -- a lot of these issues that caused the problems -- inspection of the facility, were prior to the (inaudible) on HASEP.

MR. BARRERA: Okay. And the issues you're talking, what issues does Mr. Krusinski have that are current?

MALE SPEAKER: (Inaudible) wholesale production on the West Side.

MR. BARRERA: Okay. So again if you can kind of spell that out, what exactly is it that he wants to do, what specific agencies are holding him up, and what are they telling you why it's being held up. Get that to us with as much information as possible.

It helps us for two reasons. We have USDA here but USDA has 26 sub-agencies and so it's important that we have the right one so we have as much information as possible.

Like the Department of Labor has Wage and Hour, they have OSHA, they have several different agencies. That could be agencies in and of itself, so as much information as we get and we can get it to the right agency up in D.C. Then they will give an answer to your concerns and we'll send that answer to you.

MR. KAISER: You want us to fill out this form and also I'll send you a summary as well.

MR. BARRERA: Basically tell us what the situation is, what agency you have a problem with, and what you're looking for.

MR. KAISER: What is the mailing address? I have a www.sba.gov.

MR. BARRERA: I'll give you two alternatives. The actual mailing address is 409 3rd Street, S.W., Washington, D.C. 20416, and I would recommend sending it overnight.

MR. KAISER: 20416?

MR. BARRERA: Yes. If you send it regular mail it's going to get -- whatever they call it now.

MALE SPEAKER: Zapped.

MR. BARRERA: It will get zapped and it takes about a month to a month and half to get to a federal agency now.

MR. KAISER: And so if I send it to the Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416 you'll get it?

MR. BARRERA: You've got to put my name on it.

MR. KAISER: You're going to hate me. Give me your name again.

MR. BARRERA: Michael, and that's B as in boy, A-R-R-E-R-A.

MR. KAISER: B-A-R-R--

MR. BARRERA: E-R-A. You can put National Ombudsman's Office, okay?

MR. KAISER: Thank you very much.

MR. BARRERA: No problem, no problem. You can e-mail it directly but I get the impression you're not real excited about that.

MR. KAISER: I have a secretary who understands all that stuff. They now have it set up so all I have to do is click this little dot on my computer screen and it automatically goes into my e-mail because without them setting it up for me, there's no way I can figure it out.

MR. BARRERA: Okay. If you want your secretary -- just go to the SBA website. Everything is .gov. And it's sba.gov and when you see sba.gov, you'll see a button for the ombudsman and it explains how to do the whole process. Let her figure it out for you.

MR. KAISER: Oh, if she doesn't it won't get figured.

(Laughter)

MR. BARRERA: And as far as (inaudible) they'll send us that comment in and we send it over to basically your Small Business Rep at the USDA and they'll get it to the right department.

And we try to get an answer to the small business within 60 days -- actually within 30 days of actually receiving it. And they give you guys basically a chance to look at the situation, come up with a response of what you can and cannot do for them.

MR. KAISER: I've got a trial tomorrow so I've got to cut out now.

MR. BARRERA: Okay, go right ahead.

MR. KAISER: But if I send this to you overnight like say Tuesday -- this Monday's a holiday, you'll get it Wednesday. That's what you would like, right?

MR. BARRERA: Yes. Some of my staff if they have any questions will get in contact with you. Leave them some information where we can contact you and then we can go from there.

MR. KAISER: We really appreciate this.

MR. BARRERA: Thanks for coming. Mr. Krusinski, again the fact that you've actually come here and told us your story does say good things about this country, that you can actually tell the story and that you know that what you told us, you're

not going face from anybody here, any kind of retaliation for that.

If you get any type of retaliatory acts, please let us know because then we send it to the Inspector General of that agency if there's any type of retaliation from any agency. And the Inspector General for a federal government agency is basically like the police of that agency, the police of the federal employees.

So I want you to feel comfortable sending us that information. And we appreciate you coming down.

MR. KRUSINSKI: Thank you.

MALE SPEAKER: Also we hope that this is a redeeming moment for you.

MR. KRUSINSKI: Okay, thank you.

MR. KAISER: When he gets reopened it will be a redeeming moment (inaudible) as far as I'm concerned with all due respect. It's nice to have the forum and everything but it will nice to see --

MR. KRUSINSKI: And when we reopen I (inaudible) 30/40 people on the job in less then 60 days.

MR. BARRERA: Okay. That's what it's all about, creating jobs here.

MR. KAISER: Thank you very, very much.

MR. BARRERA: Thank you. I think that sums it up.

I want to open it up for questions. We did have a Labor question but I think they said they got it resolved or they got --

MR. NEDLOCK: Actually I'm with the Department of Labor. I'm with OSHA. I don't know if there were any questions but I think we dodged the bullet today and I'm delighted.

MR. BARRERA: Go ahead. Why don't you go ahead and tell him.

MALE SPEAKER: You dodged a bullet today because some of the partners of the company that (inaudible) testifying got cold feet, were scared of retribution and calling attention to themselves, and overruled the other partner that thought that

the best way would be to bring it through this channel and air their concern and grievance this way -- but was overruled by two other partners of the company for fear of retribution.

MR. BARRERA: And I think to sum it up, we had a company that back in 1999, had a situation where they were asked to meet with some OSHA representatives because someone actually got hurt at their business.

And the representatives came and it started out kind of a gotcha type of attitude and it turned to actually a positive one.

Then I guess one of the business partners made some remarks that the particular representative didn't like so they went and found some more stuff and got some fines.

And actually the relationship he says now is actually a very good one, very positive and that they're actually working together a lot better now.

And that was about four years ago but he says the relationship is good, but his old time partners still remember the old days and they prefer to not say anything and we told them we totally understand.

And I told them I would kind of summarize basically what he told us here today but I did tell him that Labor now is not the way that Labor used to be because I've actually met with Secretary Henshaw a couple of times and he is dead serious that OSHA representatives are not to do any type of thing that would suggest any type of retaliation.

In fact I think he said the local Rep there told a fellow employee, if you ever in any way retaliate or hint at it, you will be gone. So that's the type of stuff that Labor is engaging in now.

The person was actually pretty positive but his partners were a little bit -- they said that if it's good, why ruin a good thing.

MR. NEDLOCK: Well if they want to contact me privately or if you want to give me the information later I'd be happy to meet with him and try to resolve any -- if there's any blemishes left, try to resolve them.

MR. BARRERA: Okay.

MR. NEDLOCK: (Inaudible).

MR. BARRERA: Why don't you say your name for the record.

MR. NEDLOCK: My name is Rob Nedlock.

MR. BARRERA: Okay. And he specifically said you were great to work with.

MR. NEDLOCK: Could you get that on the record?

(Laughter)

MR. BARRERA: It gets on the record.

MR. NEDLOCK: Thank you very much.

MR. BARRERA: Thank you. But again I want to thank everybody for coming. You know, it shows a lot giving us (inaudible) congressional representatives here, which shows their interest, which is very, very important.

and again, the President is very, very concerned about the strangulation of regulations because as we heard here, it does cost money, it does costs jobs.

And with the economy, we're trying to get back on line here AND it's important that we pay attention to this and it's important for federal agencies to pay attention to this.

I gave a speech last week. It's about (inaudible) people and I asked basically four questions, how many are small business owners, how many work for a small business, how many have a relative in small business, and how many have ever done business with small business? One hundred percent of the hands went up.

That shows you the impact that small business has on a community. And small businesses turn into large businesses, which employs people and if people have jobs, they spend money and the economy gets going. So again it's important that we keep this in mind.

And I really want to thank everybody for coming. Again, thank my Reg Fair members from Michigan, Minnesota, and Illinois because this is their own time. They took time away from their businesses to be here.

We don't pay them. We reimburse them for their expenses but this shows how important it is to them, and how important small business is to them to be here so I think we should give them a big hand of applause. Thanks everybody for coming.

(Whereupon, the foregoing proceedings were concluded).